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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,790	11/18/2003	Douglas Deeds	042933/270321	4545

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EXAMINER

BALAOING, ARIEL A

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/715,790

Applicant(s)

DEEDS ET AL.

Examiner

Ariel Balaoing

Art Unit

2617

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.



**CHARLES APPIAH  
PRIMARY EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 05/03/2006 have been fully considered but they are not persuasive.

Regarding claims 1, 21, and 41, the applicant argues "LIAO teaches away from displaying the required bandwidth since the required bandwidth determination is disclosed in LIAO as an intermediate step that leads to "automatic" allocation of bandwidth among competing applications" and "LIAO specifically teaches away from manual adjustment of bandwidth usage. LIAO discloses that "the cellular phone may automatically select for upgrade the application that is most active in bandwidth usage. In other embodiments, LIAO discloses that "a suitable screen may pop up listing the currently running applications and prompting the user to select one of the applications for a bandwidth upgrade. ... Thus, LIAO teaches away from the "beneficial" aspects of the proposed modification to LIAO that results in the pending rejections" (see page 3 of the remarks); the examiner respectfully disagrees. As pointed out by the applicant, in one embodiment of LIAO, a pop screen is presented to the user for selection bandwidth upgrade of a currently running application. Thus, the user manually selects which application receives a bandwidth adjustment. Therefore the benefits of presenting required bandwidth to the user is apparent as LIAO teaches wherein the display includes the capability to display other forms of bandwidth of the system (paragraph 11, 25, 47). Also, the examiner contends that claim 1, as written, provides the limitations "a display capable of" and "a controller capable of". It is clear that the display and controller would have the capabilities to display many forms of bandwidth including the required bandwidth for transmitting and receiving signals.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (see page 3 and 4), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). LIAO provides for the controller to detect bandwidth requirements of competing applications. In the automatic embodiment, an application is chosen which is most active in bandwidth usage. It would have been obvious to a person of ordinary skill in the art to present the bandwidth usage and requirements during manual mode when a user is prompted to make the selection.

Regarding claims 17, 18, 37 and 38, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the apparatus design of WATANABE would be used within the system disclosed by LIAO (see LIAO 82 and WATANABE column 10, lines 25-30). Both inventions disclose displaying data to users on a portable communication device (LIAO - paragraph 3, 4; WATANABE - col. 1, line 9-15). LIAO provides a method for display of bandwidth, while WATANABE is used to show a communication device used in wireless communication systems with display abilities. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate bandwidth displaying method with the device of WATANABE as in shared communication systems, allocation of bandwidth among competing users may be problematic (LIAO - paragraph 3).

Furthermore, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (page 7 and 8 of the remarks), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

AB 5/16/06